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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. SAMANTHA JO SERRANO, Defendant and Appellant.	B234994 (Los Angeles County Super. Ct. No. YA078847)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mark S. Arnold, Judge. Reversed and remanded.

Richard L. Fitzer, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Blythe J. Leszkay and Taylor Nguyen, Deputy Attorneys General, for Plaintiff and Respondent.

Samantha Jo Serrano was charged by information with one count of possession of methamphetamine and one count of possession of a smoking device. (Health & Saf. Code, §§ 11377, subd. (a), 11364, subd. (a).) After her motion to suppress evidence under Penal Code section 1538.5 was denied, appellant pled no contest to both counts. She appeals from the judgment, contending that the trial court erred in denying her motion to suppress evidence. (Pen. Code, § 1538.5.) We agree and reverse.

FACTUAL AND PROCEDURAL BACKGROUND

On August 14, 2010, around 10:30 p.m., Los Angeles County Deputy Sheriff Ernesto Castaneda and his partner were driving in a patrol car past the Marquis Motel in Gardena, California. Deputy Castaneda saw appellant and another person, Mr. Medina (Medina), in front of the motel. Deputy Castaneda saw Medina flick a lighted cigarette to the ground, so the deputies stopped to investigate him for littering.

Medina and appellant told the deputies that they did not have identification, but they lived in room 119 at the motel. The deputies locked appellant and Medina in the back of the patrol car because they did not have identification. According to Deputy Castaneda, appellant and Medina were detained in order to find their identification so the deputies could issue a littering ticket to Medina.

When the deputies went to room 119, the occupants did not know Medina and appellant. The deputies then learned that Medina and appellant actually lived in room 219.

When the deputies went to room 219, they found appellant's father, Mr. Serrano (Serrano), who confirmed that appellant and Medina lived there. While the deputies were speaking to appellant's father outside the room, Deputy

Castaneda saw a glass pipe, commonly used to smoke methamphetamine, on a table in the living room. The deputies asked Serrano if he was on probation or parole, and Serrano stated that he was on probation for forgery with a search condition. They detained Serrano for a probation compliance check and searched the room.

Deputy Castaneda found a WD-40 can containing methamphetamine in the bedroom. In the living room, he found a white purse. Because he wanted to obtain identification for appellant (on the theory that she was in the company of Medina, who had littered) and because he had already discovered the pipe and can containing methamphetamine, Deputy Castaneda searched the purse. Inside, he found appellant's identification, a glass pipe used to smoke methamphetamine, and a plastic baggy containing what appeared to be methamphetamine.

Appellant was charged in count 1 with possession of methamphetamine and in count 2 with misdemeanor possession of a smoking device. (Health & Saf. Code, §§ 11377, subd. (a), 11364, subd. (a).) The information further alleged as to count 1 that appellant had suffered a prior conviction within the meaning of Penal Code sections 667, subdivisions (b)-(i), and 1170.12, subdivisions (a)-(d).

Appellant filed a motion to suppress the evidence found in her purse, pursuant to Penal Code section 1538.5. She argued that there was no cause to detain her, her illegal detention was unduly prolonged, and that the search of her purse exceeded the scope of the probation search of Serrano.

At the hearing on the motion to suppress, the prosecutor conceded that appellant's detention while the deputies searched for her identification constituted an unlawful detention. However, he argued that the evidence found in her purse was admissible under the theory of inevitable discovery. In particular, he asserted that appellant's companion, Medina, was lawfully detained for littering and that

Deputy Castaneda accordingly was entitled to look for his identification in the motel room in which he resided. When Deputy Castaneda ascertained that Medina lived in room 219 and went there, he encountered Serrano, saw the pipe in the living room in plain view, and learned that Serrano was on probation with a search condition. Deputy Castaneda could therefore legally enter the room to conduct a probation search, pursuant to which he found a can containing methamphetamine.

At that point, the prosecutor conceded, Deputy Castaneda could not rely on Serrano's probation search condition to search the purse, because Serrano is male and the purse was "clearly female." However, the prosecutor argued that having found the pipe and the can containing methamphetamine, Deputy Castaneda would have searched the purse anyway for additional methamphetamine, and was entitled to do so.

The trial court concluded that appellant's detention was unlawful and that the search of appellant's purse could not be justified as a probation search, but the court found that the inevitable discovery doctrine applied: "The fact that [appellant's] father was on probation coupled with the finding of the meth pipe properly entitled [Deputy Castaneda] to search the entire room and everything that was contained in it because [appellant's father] had access to all of those areas." The court thus denied appellant's motion to suppress.

Appellant then entered a plea of no contest to both counts. The court dismissed count 2 pursuant to the plea negotiation. The court granted the prosecution's motion to dismiss appellant's prior conviction, suspended imposition of sentence, and placed appellant on probation. Appellant filed a timely notice of appeal from the denial of her motion to suppress.

DISCUSSION

Appellant contends that the trial court erred in concluding that the inevitable discovery rule applied to the discovery of the pipe and methamphetamine in her purse, and that therefore the court erred in denying her motion to suppress. We agree.

"When considering a trial court's denial of a suppression motion, 'we view the record in the light most favorable to the trial court's ruling, deferring to those express or implied findings of fact supported by substantial evidence.' [Citations.]" (*People v. Davis* (2005) 36 Cal.4th 510, 528-529.) "We exercise our independent judgment to determine whether, on the facts found, the search or seizure was reasonable under the Fourth Amendment. [Citations.]" (*People v. Strider* (2009) 177 Cal.App.4th 1393, 1398.)

The exclusionary rule is relied upon to exclude evidence obtained as a result of unlawful police conduct because "this admittedly drastic and socially costly course is needed to deter police from violations of constitutional and statutory protections." (*Nix v. Williams* (1984) 467 U.S. 431, 442-443.) "The inevitable discovery doctrine operates as an exception to the exclusionary rule: Seized evidence is admissible in instances in which it would have been discovered by the police through lawful means." (*People v. Superior Court* (*Walker*) (2006) 143 Cal.App.4th 1183, 1214.) "The prosecution bears the burden of proving by a preponderance of the evidence that evidence otherwise unlawfully obtained would have been inevitably discovered. [Citations.]" (*Id.* at p. 1217.)

Here, in support of the trial court's ruling, respondent argues that the nexus of the trial court's inevitable discovery ruling is Serrano's probation search condition. According to respondent: "Based on the totality of the circumstances [the discovery of the pipe in the living room and the can containing

methamphetamine in the bedroom], Deputy Castaneda could reasonably determine that the motel room was being used for a criminal enterprise. At that point, the deputy could lawfully search the purse pursuant to [Serrano's] probation search condition on the reasonable belief that [Serrano] had joint use of the purse, or, at least, access to it. [Citation.] Indeed, [Serrano] was in the room alone with the purse while appellant was outside the motel, and he had the opportunity to secrete narcotics in it."

We disagree that the search of appellant's purse was justified as an inevitable result of Serrano's probation search condition. Generally, "[t]he fact that law enforcement agents are lawfully in possession of containers [such as a purse] does not give them authority to conduct a warrantless search of the contents of those containers. [Citation.]" (*People v. Wilkinson* (2008) 163 Cal.App.4th 1554, 1570.) To justify the search of appellant's purse, respondent relies on *People v. Smith* (2002) 95 Cal.App.4th 912 (*Smith*). But the circumstances in *Smith* were very different from those presented here.

In *Smith*, when police officers arrived at the probationer's residence, the officers found six people in the residence. They limited their search to a bedroom that the defendant and the probationer shared. After the officers found various items containing narcotics scattered throughout the bedroom, the defendant told the officers there was a gun in a safe in the bedroom closet. She said the key was inside her purse, and she gave an officer permission to retrieve the key from her purse. After the officer retrieved the key, the officer placed the purse on the bed, and a narcotics police dog subsequently indicated there were narcotics in the purse. When the officers searched the purse, they discovered a bag of methamphetamine.

The appellate court upheld the search, concluding that it was reasonable for the officers to assume the probationer and the defendant had joint control over the

items in the bedroom. (*Smith, supra*, 95 Cal.App.4th at p. 918.) The court pointed out that the narcotics discovered in the bedroom were "hidden in repositories scattered throughout" the bedroom. (*Ibid.*) The court also relied on the significance of the gun hidden in the safe and, especially, the fact that the key to the safe was inside the defendant's purse. (*Id.* at pp. 918-919.) These circumstances indicated that the defendant and her boyfriend "were sharing in a criminal enterprise," and that the boyfriend had access to or control over the purse. (*Id.* at p. 919.)

In the instant case, by contrast, there were no similar circumstances that reasonably suggested that the probationer, Serrano, exercised joint ownership, control, or possession over appellant's purse. True, appellant had left her purse in the motel room in which Serrano was present and gone downstairs with Medina. And, true, before searching the purse, Deputy Castaneda had found a narcotics pipe and a WD-40 can containing methamphetamine in the room. But these facts do not reasonably suggest the type of joint "criminal enterprise" between Serrano and appellant as described in *Smith*, and certainly do not suggest that Serrano shared joint control over or access to appellant's purse pursuant to such an enterprise.

We find *People v. Baker* (2008) 164 Cal.App.4th 1152, 1156 (*Baker*) more applicable to the instant case. There, the court held that the search of a car passenger's purse was not justified by the driver's parole search condition. When the car in which the defendant was a passenger was stopped for speeding, the parolee driver told the officer that he was on parole. The officer decided to conduct a parole search of the car and asked the defendant to exit the car. Her purse was sitting at her feet, but she did not remove it from the car. The officer found nothing in the car, but he searched the purse and found a small amount of methamphetamine.

The court in *Baker* explained the principles involved in the search of a closed container in the context of a parole or probation search. "When executing a parole or probation search, the searching officer may look into closed containers that he or she reasonably believes are in the complete or joint control of the parolee or probationer. [Citations.] This is true because the need to supervise those who have consented to probationary or parolee searches must be balanced against the reasonable privacy expectations of those who reside with, ride with, or otherwise associate with parolees or probationers. We acknowledge that passengers in automobiles have a lesser expectation of privacy in automobiles than in a residence. [Citation.] However, a purse has been recognized as an inherently private repository for personal items. [Citations.] While those who associate with parolees or probationers must assume the risk that when they share ownership or possession with a parolee or probationer their privacy in these items might be violated, they do not abdicate all expectations of privacy in all personal property. The key question remains: whether there is joint ownership, control, or possession over the searched item with the parolee or probationer. [Citations.]" (*Baker*, *supra*, 164 Cal.App.4th at p. 1159.)

Baker concluded that the facts of the case indicated that "there could be no reasonable suspicion that the purse belonged to the driver, that the driver exercised control or possession of the purse, or that the purse contained anything belonging to the driver. [Citation.]" (*Baker*, *supra*, 164 Cal.App.4th at p. 1159.) Similarly, in the present case, as we have explained, there were no circumstances that indicated the probationer, Serrano, exercised joint ownership, control, or possession over appellant's purse. (*People v. Veronica* (1980) 107 Cal.App.3d 906, 909 [acknowledging that, although there might be circumstances indicating a purse is jointly possessed by a parolee and his wife, "there was simply nothing to

overcome the obvious presumption that the purse was hers, not his"].) Because there was no evidence that the probationer exercised joint control over appellant's purse, the search of appellant's purse cannot be justified as an inevitable product of a search pursuant to Serrano's probation search condition. Therefore, appellant's motion to suppress should have been granted.

DISPOSITION

The judgment is reversed and the matter remanded for further proceedings. Appellant is to be allowed to withdraw her no contest plea, and the trial court is instructed to grant her motion to suppress the evidence.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

SUZUKAWA, J.